

BOARD OF APPEALS CASE NO. 3916 *

BEFORE THE

APPLICANT: Greater Harford *

ZONING HEARING EXAMINER

Industrial Park Partnership

REQUEST: Variance to disturb *

OF HARFORD COUNTY

non-tidal wetlands, buffer, and *

saturated soils; 1701 Trimble *

Road, Edgewood

Hearing Advertised

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Aegis: 7/20/89 & 7/27/89

HEARING DATE: August 23, 1989

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Record: 7/19/89 & 7/26/89

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ZONING HEARING EXAMINER'S DECISION

The Applicant is Greater Harford Industrial Park Partnership. The Applicant is the contract purchaser of the subject parcel, which is currently owned by Donald and Barbara A. Heine, and Thelma Heine. The Applicant is requesting a variance to disturb non-tidal wetlands, buffer areas, and saturated soils.

The subject parcel is located at 1701 Trimble Road, west of Edgewood, in the First Election District. The parcel is also identified as Parcel No. 14, on Tax Map 69. The parcel is zoned GI (General Industrial) and contains 177.77 acres, more or less.

Mr. Philip Hess appeared and testified that he is one of the partners of the Greater Harford Industrial Park Partnership, and that the partnership is the contract purchaser of the subject parcel. The contract is contingent upon the requested variances being granted to enable development of the parcel. Mr Hess testified that the property would be subdivided into lots which would be sold for development. Mr. Hess introduced a conceptual site plan as Petitioner's Exhibit No. 11, showing 13 lots on the 177.77 acre parcel, with two separate access points from Trimble Road.

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The witness did say the site plan, identified as Petitioner's Exhibit No. 11, was conceptual and that the lot lines may be altered in order to accommodate potential purchasers. The witness said the denial of the variances would cause practical difficulty due to the loss of developable acreage and it would not be practical to develop the site without the variances. Mr. Hess said he has reviewed the Staff Report and agrees that the conditions imposed in the Staff Report are acceptable.

Mr. Richard Morris appeared and qualified as an expert in the field of civil engineering. Mr. Morris said that the property would be developed with public water and sewer if the variances are granted. Mr. Morris said that the variances were necessary to justify the cost of bringing water and sewer lines to the property and making necessary improvements to Trimble Road. He testified that the conceptual site plan was consistent with generally accepted engineering principles and practices.

Mr. Theodore Scott appeared and qualified as an expert in storm water management facility design. Mr. Scott testified that the proposed storm water facility would be located in the middle portion of the southern half of the property, as indicated on Applicant's Exhibit No. 11. The witness said that storm water would be channeled into the storm water pre-treatment area and then channeled to the storm water retention facility, which would be a wet pond. The witness said the pond should achieve a maximum of 80% removal of sediment loadings and attach pollutants. He testified that the facility would exceed all applicable requirements and that it is designed to handle run-off from the entire project. Mr. Scott, also testified, that the facility could adequately accommodate storm water run-off, regardless of the exact location and design of the proposed lots and roads.

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The next witness to testify for the Applicant was Peter Bergmann, who was accepted as an expert in the field of environmental science. Referring to Applicant's Exhibit No. 11, Mr. Bergmann identified the area of wetlands located on the property and described the variances requested.. The area shown on Applicant's Exhibit No. 11 in dark green indicates wetlands as defined by the Army Corp of Engineers. The area shown in light green indicate wetlands and buffers, as designated by the Harford County Natural Resources District. Mr. Bergmann said the areas in light green and dark green will not be disturbed. The witness further testified that the area shown in red on Petitioner's Exhibit No. 11 reflects the Army Corp of Engineers wetlands that would be disturbed, pursuant to Corp of Engineer regulations, and the light brown areas designate areas of the Harford County Natural Resource District defined wetlands and buffers, which would be disturbed by development and are the subject of the variances requested.

Mr. Bergmann testified that he prepared a wetlands functional analysis of the property. The analysis and supplement were introduced as Petitioner's Exhibit Nos. 14 and 15. Mr. Bergmann stated that because of low functional value, the wetlands to be disturbed are not true wetlands because they do not serve the functions wetlands are supposed to serve. He testified he was familiar with the conservation requirements set forth in the Zoning Code and that variances from these requirements, as requested by the Applicant, were necessary. He said, in his opinion, the purpose of the Natural Resource District, which was to protect sensitive environmental features, would be served by granting the variances.

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He indicated that the post-development condition of the property would be an improvement over the existing situation because the valuable wetlands would not be disturbed, and additional wetlands would be created as a result of the migration plan and the detrimental affects from run-off and pollution cause by the current agricultural activities would be remedied.

The final witness to testify on behalf of the Applicant was William Sivertsen, the Director of the Harford County Office of Economic Development. Mr. Sivertsen testified that his office supported the requested variances in view of the positive fiscal impact the project would have on Harford County, in terms of future employment, property tax revenue, and other benefits.

No protestants testified in opposition to the Applicant's request, and the Staff Report of the Department of Planning and Zoning recommends approval with conditions and states, "In summary, the Department of Planning and Zoning has reviewed the proposed site plan and wetlands report and generally finds that the NRD on this overall development site will not be adversely impacted by the proposed development."

CONCLUSION:

The Applicants are requesting variances from the requirements of Harford County Code Section 267-41(D)(5)(e), and Section 267-41(D)(5)(c), to develop within the non-tidal wetlands and buffer areas, and to disturb sensitive areas such as saturated soils.

The applicable sections are as follows:

267-41(D)(5)(e) Non-tidal wetlands shall not be disturbed by development. A buffer of at least seventy-five (75) feet shall be maintained in areas adjacent to wetlands.

267-41(D)(5)(c) Sensitive environmental areas, including significant special natural features, significant wildlife habitats, saturated soils, highly erodible soils and designated scenic areas shall not be disturbed during any development.

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The Harford County Code, pursuant to Section 267-41(D)(6) permits variances to the requirements of the Natural Resources District regulations and states:

Variances. The Board may grant a variance to Subsection D(3), (4) or (5) of the Natural Resource District regulations upon a finding by the Board that the proposed development will not adversely affect the Natural Resources District. Prior to rendering approval, the Board shall request advisory comments from the Zoning Administrator, the Soil Conservation Service and the Department of Natural Resources.

The file contains comments from the Soil Conservation Service and Department of Natural Resources, and the Staff Report from the Department of Planning and Zoning. Likewise, the Applicant had a wetland functional analysis and environmental impact study prepared by Geo-Technical Associates, Inc.

It is the finding of the Hearing Examiner that the requested variances to development within the non-tidal wetlands and buffer area and to disturb sensitive areas will not have an adverse impact on the Natural Resource District. Therefore, the requested variances are hereby recommended, subject to the following conditions:

1. That the development conform to the site plan dated August, 1989 insofar as to the disturbance of wetlands and buffer areas, the general type and design of the stormwater management facility and the limits of disturbance. Any deviation from this plan as to the disturbance of the wetland and buffer areas shall be reviewed and approved by the Department of Planning and Zoning and may require approval of the Board if determined to be a major modification. Modification to the site plan with regard to road alignment and lot lines shall be permitted so long as the area of wetland disturbance is not expanded.

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2. That the Applicant be required to install and maintain the oil/grease separators, pre-treatment area and the stormwater retention facility as a stormwater management/water quality enhancement facility on the site. Additional water quality measures may be required during site plan review for Lots 4 and 5 as water leaving these sites will not flow through the pre-treatment area and retention pond.
3. A Property Owners' Association shall be established for the future ownership and maintenance of the stormwater management facility and all open space. The documents establishing such an association shall be recorded in the Land Records of Harford County and be binding on all lots in the Greater Harford Industrial Park.
4. A Maintenance Agreement for private stormwater management systems shall be executed between the Property Owner's Association and Harford County. Both the Departments of Planning and Zoning and Public Works shall review and approve said agreement prior to its execution. This Agreement shall include provisions for the Department of Public Works to inspect the facility and require maintenance as needed. Any changes in the design of the stormwater management facility must be approved by the Department of Planning and Zoning, as well as the Department of Public Works. At the discretion of the Department of Planning and Zoning, major modification of the facility may require the approval of the Board of Appeals.
5. A preliminary subdivision site plan shall be submitted for review and approval prior to final plat recordation. The NRD wetlands or buffers which are to remain undisturbed shall not be included within development lots. The "not developed area" between Lots 3 and 4 shall include the vegetated wetlands and a 75 foot buffer with an additional 75 foot buffer extending along the easternmost boundary of Lot 4 from the "not developed" area to the railroad tracks to protect the off-site stream.

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6. Prior to issuance of a grading permit, the Applicant shall submit a planting plan/mitigation plan for the enhancement of the emergent wetland area between the pre-treatment area and the retention pond and the enhancement of the retention pond. This planting plan shall include the species, size and location for the new plantings and shall be accompanied by a schedule for the plantings. This plan must be approved by the Department of Planning and Zoning and concurrence sought from the Department of Natural Resources.
7. Prior to issuance of any building permits on this site, the Applicant shall provide financial security for the installation and survival of the enhancement plantings. Such security shall be in a form acceptable to the Law Department and in an amount sufficient to provide for the purchase and installation of planting materials as depicted on the planting plan. Such security shall run for a period of three years after the installation of planting materials. The Department of Planning and Zoning shall be notified of the planting date by the Applicant and shall monitor the site on an annual basis. The minimum survival rate of plant species shall be 85 percent after one (1) year. After three (3) years, the minimal survival rate of plant species shall be 85 percent, with a satisfactory ground and canopy cover consistent with the plant species and non-tidal wetlands characteristics.

Date OCT 4 1989

L. A. Hinderhofer
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Zoning Hearing Examiner